



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 1105/2011

Madan Lal Verma S/o Narayan Lal Verma, aged 43 years, r/o
Ganesh Chauk Vallabh Nagar Udasin Asharam Ke Pass, District
Udaipur, Rajasthan

----Petitioner

Versus

1. The State of Rajasthan through the Secretary, Department of Education, Secretariat, Jaipur, Rajasthan.
2. The Director, Secondary Education, Rajasthan, Bikaner, Rajasthan.
3. The District Education Officer, (Secondary-II), Udaipur, Rajasthan.

----Respondents

For Petitioner(s) : Dr. Nikhil Dungawat

For Respondent(s) : Mr. Sarwan Kumar - AGC

HON'BLE MR. JUSTICE ARUN MONGA

Judgment (Oral)

01/04/2024

1. Petitioner, aggrieved *inter alia* against appellate order dated 02.11.2010 (Annexure-12), whereby, punishment of withholding of increment for the period of three years without cumulative effect was upheld, is before this Court.

2. Relevant facts as pleaded in the writ petition are that the petitioner (a Teacher) was served with memorandum of the charge-sheet on 21.11.2002. The charges levelled were that while discharging his duties as a Teacher, petitioner took half day leave without informing any authority. It was alleged that petitioner went to the house of a student namely Smt. Rekha alongwith an other person on 26.09.2002. Petitioner remained there with the



group of people for half an hour. He then again went to the school and made certain allegations on the Physical Teacher Mohan Lal Jat. Mohan Lal Jat was forcefully pulled out from the school by petitioner and his face was painted with black colour. On 28.09.2002 mother of Smt. Rekha came to the school and alleged that petitioner is liable to be proceeded against.

3. The petitioner submitted a detailed representation on 04.12.2002 and clarified the incident which occurred on 26.09.2002 and pleaded not guilty. Even villagers, Sarpanch, Wardpanch and parents of the students took a stand in favour of the petitioner.

4. An inquiry was held. Subsequently, competent authority passed an office order on 22.01.2003, whereby, petitioner was held guilty of the misconduct and for the incident that occurred on 26.09.2002. Petitioner was awarded punishment of stoppage of three years' increment without cumulative effect.

5. Aggrieved, petitioner preferred a departmental appeal under Rule 23 of the Rules of 1958. It was averred in the appeal that during the trial of the criminal case learned court below came to the conclusion that Mohan Lal Jat was having illicit relationship with not only Rekha, but also Manju.

6. The appellate authority, after lapse of more than seven years dismissed the appeal on 02.11.2010. Hence the instant petition.

7. Stand taken in the reply on behalf of respondents is that due to the misbehavior of petitioner with Mohan Lal Jat, who is Physical Teacher, a preliminary inquiry was initiated against him. He was found guilty of the misconduct. Petitioner was thus rightly penalised with the stoppage of increment for three years without



cumulative effect by the disciplinary authority i.e. District Education Officer (Secondary) II, Udaipur.

8. It is pleaded in the reply that before passing the order dated 02.11.2010 in appeal, challenging the order dated 22.01.2003, proper opportunity of hearing was provided to the petitioner.

Therefore, order of penalty passed by the competent authority and the order dismissing the appeal of the petitioner are just and proper.

9. In the aforesaid backdrop, I have heard the rival contentions and perused the case file and I shall now proceed to render my opinion thereof by recording reasons in the succeeding part.

10. At the thresh hold, I am constrained to observe that the appellate authority is bound by the Rule 30(2) of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958. With that in mind, a perusal of the impugned appellate order reveals that the appellate authority has not followed the procedure and the mandate of Rule 30 ibid under which the appeal was filed. Said Rule 30(2) is almost a self contained code in itself and is reproduced herein below for ready reference :-

“Rule 30

(1). X-x-x-x-x

(2). *In the case of appeal against the order imposing any of the penalties specified in Rule 14 the appellate authority shall consider:-*

- (A) *Whether the procedure prescribed in these rules has been complied with and if not whether such non-compliance has resulted in violation of any provision of the constitution or in failure of justice.*
- (B) *Whether the facts on which the order was passed have been established.*
- (C) *Whether the facts established afford sufficient justification for making an order; and*
- (D) *Whether the penalty imposed is excessive, adequate or inadequate (and after giving a personal hearing to the government servant to explain his case, if desires so) and after consultation with the commission if such consultation is necessary in the case, pass order-*





- (i) *Setting aside, reducing, confirming or enhancing the penalty.*
- (ii) *Remitting the case to the authority which imposed the penalty; or to any other authority with such direction as it may deem fit in the circumstances of the case.”*

The aforesaid Rule envisages that only after considering the factors contained therein, the appellate authority can then pass appropriate orders, including setting aside, reducing, confirming, or enhancing the penalty. The criteria mandated therein is binding on the appellate authority so as to ensure a thorough and fair review process for appeals against penalties, taking into account procedural compliance, factual accuracy, justification for the penalty, and the appropriateness of the penalty itself. However, all of it seems to have been given a complete short shrift. More of it later, as it would unfold in the succeeding discussion.

11. The appellate authority took over seven years to decide the appeal, yet even after such a prolonged duration, it is apparent that the decision lacked careful consideration. Despite the appeal having been filed by Madan Lal Verma i.e. petitioner herein, the appellate court's order refers to him as Mohan Lal i.e. another co employee. This failure to properly engage with the case of the petitioner renders the decision both unsound and arbitrary. It is borne out that the impugned orders dated 22.01.2003 and 02.11.2010 contain numerous factual fallacies. Not only the petitioner was referred to as Mohan Lal in many instances, but even the arguments of only Mohan Lal Jat were considered by the appellate authority.

12. The appellate authority's order cannot be termed as speaking or well reasoned one, as it does not address the merits of the



petitioner's case or the grounds presented before it. Operating as a quasi-judicial body, a statutory appellate authority is obligated to thoroughly deliberate on the legal points and factual aspects raised in the petitioner's appeal against the disciplinary authorities' ruling. Therefore, it is imperative that a comprehensive and detailed explanation, or "speaking order," be provided in such instances. Of course, they are not expected to render judgments like judicial officers, but the statutory parameters applicable on them must be adhered to.

13. That aside, even though acquittal in criminal case may not be *ipso-facto* binding in the departmental proceedings, but same can still be noticed to ascertain if it has any persuasive value. The appellate authority, while deciding the appeal and holding the petitioner guilty of misconduct, did not even consider that the petitioner was acquitted by the criminal court which held/determined that he was not involved in the incident dated 26.09.2002. Although the petitioner was found guilty of misconduct with a colleague but he was acquitted.

14. Also, I am of the view, that withholding a service appeal, without any reason, for as long as seven years, amounts to denial of justice on the ground of sheer delay.

15. As an upshot of my discussion in the preceding paragraphs, the writ petition is allowed. The impugned orders dated 21.22.2002 (Annexur-1), 22.01.2003 (Annexure-05) & 02.11.2010 (Annexure-11) are set aside with consequences to follow. Resultantly, the respondents are directed to grant the benefit of selections scale on completion of 9, 18 and 27 years of service from the date of appointment of the petitioner alongwith



incidental increments and all other consequential benefits. Calculations be made within a period of three months from the date petitioner approaches with the web print of the instant order and he shall also be entitled to admissible interest as per the applicable service rules.

16. Pending application(s), if any, stand(s) disposed of.

(ARUN MONGA),J

434-AK Chouhan/-

Whether fit for reporting : Yes/No